make an award, first in the form of a special case under section 7(b) of the Arbitration Act of 1889 (corresponding to section 8(b) of our Arbitration Ordinance, 1950); and secondly in the form of a final and conclusive award. The award in the final form was to become effective if either party failed to give notice to the other of their intention to take the matter to court within 14 days of the award or if from 14 days of the service of the notice the award was not set down for argument before the court.

The validity of this order was questioned on appeal on the following grounds, namely; (a) whether the arbitrators had a right to make an award in the alternative form; (b) whether they had the jurisdiction to impose conditions as to the time within which either party must elect to adopt the award in the form of a special case. The Court of Appeal by a majority decision held that the arbitrators had not exceeded their jurisdiction in making the award in the alternative form, and the award must stand. This decision was followed in *J. L. Lyon & Co., Limited* v. *Haddock, Parker & Co.*[2]

In the instant case, the effect of the judgment of the learned judge in the court below is to set aside the award of the arbitrator in the final and conclusive form and to substitute therefor an award in the second alternative, although in the end the result is the same. In the first place, in my opinion, an award can only be set aside by the court on an application under section 12(2) of the Arbitration Ordinance. The recently reported case of *S. J. & M. M. Price, Ltd.* v. *Milner* [3] concerns an award in a dispute between the builders and the building owner which was remitted by the court hearing the special case stated to the arbitrator for reconsideration. The form of the award was held to be defective. Instead of posing the questions of law on which the court was to adjudicate, the award stated the issues which in the arbitrator's opinion arose and his conclusions thereon. The award was not made in the alternative form as in the instant case but appeared to have been made in the form of a tentative judgment in favour of the builders to become final and conclusive if the findings of the arbitrator were not set down for hearing by either party on a point of law within six weeks of the award being taken up. The owner set down the award as a special case for hearing within the prescribed time and also applied by way of notice of motion after the lapse of six weeks to set aside the award on the ground that the arbitrator had misconducted himself. The court dismissed the application to set aside the award because it was made out of time and without obtaining an order extending the time under Order 88 rule 5(1) of the Rules of the Supreme Court (corresponding to Order 64 rule 14 of our Rules of the Supreme Court). Then at the hearing of the application to consider the case stated, counsel for the owner asked the court to set aside the award or to remit it. The court remitted the award because it was defective in form and substance but refused to set aside the award because the application was not for an order to set aside the award. In this connection, Edmund Davies J., said:

> "I am not satisfied that the court has any power, of its own volition and in the absence of any duly instituted application by either party to that end, to set aside an award in the form of a special case".[3]

In the second place, on the date when the application was filed in court, the award in its final and conclusive form having come into force, there were no questions of law in the case stated under the first two alternatives of the award subsisting for determination by the court. Therefore consent or waiver cannot confer jurisdiction or power on the court to hear and determine an issue or a cause of action which is non-existent.

This appeal must therefore fail. Since the proceedings in the court below are from their very inception a nullity, no order will be made in regard to this appeal except to make an order setting aside the whole of these proceedings in Originating Summons No. 39 of 1965. There will be no order for costs.

Barakbah L.P. and **Azmi C.J. (Malaya)** concurred.

Appeal dismissed.

Solicitors: *Heng, Chen & Co.*

PUBLIC PROSECUTOR v. CHEW SHAW CHIN & ORS.

[O.Cr.J. (Williams J.) January 24, 1967]

[Miri — Criminal Trial No. K.63 of 1966]

Criminal Law and Procedure — High Court in Borneo — Offences committed outside the States of Sarawak and Sabah — Whether the High Court has jurisdiction — Courts of Judicature Act, 1964, ss. 22(1)(a), 23(2)(c), 25 — Criminal Procedure Code (Cap. 58), s. 7 — Local jurisdiction — Constitution of Malaysia, art. 121.

Penal Code, ss. 3, 108A & 121A — Conspiracy — Activities done in Brunei — Part of conspiracy taking place in Sarawak — Wether High Court has jurisdiction.

The High Court in Borneo is a creature of statute and was brought into being by the provisions of article 121 of the Constitution of Malaysia. The Courts of Judicature Act, 1964, regulates the jurisdiction and powers of that court and thus anything that conflicts with the plain words of that Act cannot stand. The words contained in section 22(1)(a) of the said Act are plain, and they mean that an offence committed outside the States of Sarawak and Sabah is not triable by the High Court in Borneo.

In this case as part of the conspiracy took place in Sarawak the High Court in Borneo had jurisdiction to try the case.

CRIMINAL TRIAL.

C. J. Millar (Deputy Public Prosecutor) for the complainant.

Dato' David Marshall for the accused.

Williams J.: The charge as laid in this case involves activities done in the State of Brunei. A preliminary matter of some considerable importance has arisen therefrom namely whether this court has jurisdiction to try offences committed outside the States of Sarawak and Sabah. Considerable and cogent arguments have been addressed to me on this point and I am grateful to both Dato' Marshall, who appeared for the first accused, and Mr. Millar, the deputy public prosecutor.

Dato' Marshall who argued that an offence complete in itself in Brunei is not triable before me based his case primarily on the wording of section 22(1)(a) of the Courts of Judicature Act, 1964, and the definition of 'local jurisdiction' as given in section 3 of that Act. Clearly, he said, if these words mean anything they mean that an offence committed outside the States of Sarawak and Sabah is not triable by the High Court in Borneo. It begins and ends there. That there may be some unfortunate effect of such an offence within the States of Sarawak, such as in this case where there was an alleged conspiracy to do an unlawful act in Sarawak, an act which incidentally was never executed, does not affect the situation.

Mr. Millar based his argument on the following grounds, namely that the Courts of Judicature Act, 1964, does not deprive the High Court in Borneo of the jurisdiction which was formerly exercised by the High Court of Sarawak, North Borneo and Brunei. That court, he said, did have jurisdiction to deal with offences committed outside Sarawak. To this end he referred to sections 3 and 108A of the Penal Code, and to section 7(b) of the Criminal Procedure Code, which call in aid international law. Indeed most of his able arguments were directed to show how even assuming the conspiracy was complete in the State of Brunei it is triable in Sarawak because it might have some effect in Miri — but precisely what effect remained vague.

May I say at once that I do not think that section 108A of the Penal Code takes the matter very much further as the essential offence, the 'abetment', is envisaged as having been done in Sarawak. Section 121A of the Code would be of more assistance to him as that section clearly refers to certain conspiracies being committed 'without Sarawak'.

I think that perhaps the most cogent argument in Mr. Millar's favour is that the Penal Code and the Criminal Procedure Code have both been amended since Malaysia Day and more particularly so have section 121A and section 7 of the respective Codes. This might well lead to the view that the Courts of Judicature Act, 1964, contemplates the High Court in Borneo as having jurisdiction to try offences committed outside Sarawak.

Dato' Marshall cast doubt upon these particular provisions, particularly section 7 of the Criminal Procedure Code, as they would purport to confer upon a former Colonial court jurisdiction in excess of that of the Imperial country. It has not been lost upon me however that prior to 1946, Sarawak was a Sovereign country. But I am not particularly impressed by any argument which bases a court's extra-territorial jurisdiction upon a procedural code.

I am then brought back to the position of the present court as it now stands, i.e. under the provisions of the Constitution of Malaysia and the Courts of Judicature Act, 1964.

On this aspect of the case Mr. Millar referred to the Malaysia Act, 1963, and, I think, particularly to section 87. However, such savings as are therein contained were subject to 'other provision' being made. What can the Courts of Judicature Act, 1964, be other than such provision.

There is nothing in section 25 of the Act akin to the provisions of section 23(2)(c), which expressly preserve jurisdiction in civil matters which were formerly had by the High Court of Sarawak, North Borneo and Brunei prior to Malaysia Day. The implication is that such a saving was never intended to be made in the case of criminal jurisdiction.

Again such 'powers' as were deemed fit to be preserved were expressly done so by the provisions of section 25 of the Act.

The crux of the matter then, as it appears to me, is that the High Court in Borneo is a creature of statute and was brought into being by the provisions of Article 121 of the Constitution. The Courts of Judicature Act, 1964, regulates the jurisdiction and powers of that court and thus anything that conflicts with the plain words of that Act cannot stand.

To my mind nothing can be plainer than the words contained in section 22(1)(a) of that Act and therefore I consider that Mr. Millar's contention must fail.

I am only too aware that this ruling may create the apparent absurdity that there may be certain offences known to the law in Sarawak which cannot be tried as there is no court competent to try them. Be that as it may the remedy lies with the legislature and not with me. The words of the Courts of Judicature Act, 1964, must be given their plain effect; indeed it would seem to me that any other course could well lead

to confusion in the administration of the law in Malaysia.

I ought perhaps to add that the provisions of sub-paragraphs (b), (c) and (d) of section 22(1) of the Courts of Judicature Act, 1964, were not relevant to the facts of this case. But such special provisions do serve to reinforce me in the view that I have taken in this matter.

Dato' Marshall also raised matters upon which he objected to the form of the charge, namely that it was bad because it disclosed not one conspiracy committed in Sarawak but several conspiracies, some of which, if not all, were committed in the State of Brunei.

Suffice it to say that as I see the charge and the evidence as outlined by Mr. Millar I consider that the conspiracy complained of is one act; an overall conspiracy of which any separate agreement between individuals would but constitute a part of the whole. Further and on the footing that part of that conspiracy took place in Sarawak I consider that I have jurisdiction to try the case.

Order accordingly.

GOVINDA MUDALIAR SONS v. GOVINDASAMY

[A.C.J. (Gill J.) February 2, 1967]

[K.L. — Civil Appeal No. 24 of 1966]

Landlord and Tenant — Premises required by landlord for rebuilding purposes — Intention to demolish — Public interest — Certificate of Rent Assessment Board — Conditions in — Appeal on point of law — Control of Rent Ordinance, 1956, ss. 11(1) and 12(1)(m).

This was an appeal by the tenant against the decision of the Rent Assessment Board granting the respondent landlord a certificate under section 12(1)(m) of the Control of Rent Ordinance to the effect that the board was satisfied that he, the landlord, intended to demolish the premises in question for purposes of rebuilding and that in its opinion it was in the public interest that he should be permitted to do so. The certificate was granted subject to two conditions: (1) the respondent obtain re-approval of the site and building plans, (2) the appellant be allowed to occupy the premises for one year from the date of the certificate.

The respondent gave evidence before the board that he intended to rebuild. He bought the premises in 1945 and in 1955 the building developed several cracks when the municipality laid a sewer. He made up his mind to demolish the building and rebuild, the new building to be set back 20 feet from the existing street line and he agreed to surrender 20 feet to the municipality for purposes of road widening. He had site and building plans prepared which were approved by the municipality. He admitted that in 1955 he had an intention to sell the premises in question but he had no such intention since 1958. He denied that it was not his intention genuinely to pull down the premises and rebuild.

Held: (1) in view of the various steps which the respondent had taken, it could not be said that he did no more than entertain the idea of demolishing the old building and putting up a new one. There was nothing tentative or indefinite about his intention and the board did all they could to protect the appellant by imposing a condition as regard re-approval of the site and building plans;

(2) there was nothing on the face of what the board had said in their certificate or in their grounds of judgment to show that they took an erroneous view of the law. There was sufficient evidence to support their decision.

Cases referred to:—

(1) *Bracegirdle* v. *Oxley* [1947] 1 K.B. 349, 358.

(2) *Tay Yew Heng* v. *Lee Thean Lai* [1959] M.L.J. 78, 79.

(3) *Gurcharan Singh* v. *Rochi Silk Store* [1959] M.L.J. 229, 231.

(4) *Edwards* v. *Bairstow* [1956] A.C. 14.

(5) *Cunliffe* v. *Goodman* [1950] 2 K.B. 237.

CIVIL APPEAL.

Ng Ek Teong (*Padmanabhan* with him) for the appellant.

R. R. Chelliah for the respondent.

Gill J.: This was an appeal by the tenant of premises No. 28, Batu Road, Kuala Lumpur against the decision of the Rent Assessment Board, Kuala Lumpur granting the respondent as the owner of the premises a certificate under section 12(1)(m) of the Control of Rent Ordinance, 1956 to the effect that the board was satisfied that he intended to demolish the premises in question for the purpose of rebuilding and that in its opinion it was in the public interest that he should be permitted to do so. The certificate was granted on 28th October, 1961 subject to the conditions (1) that the respondent shall obtain re-approval of the site and building plans and (2) that the appellant should be allowed to occupy the premises for one year from 28th October, 1961.

Under the Control of Rent Ordinance the only right of appeal against a decision of a Rent Assessment Board is given by section 11(1) which provides that "an appeal shall lie on a point of law from any decision of the board." In granting the certificate the board made a finding, firstly, that the owner intended to demolish and rebuild, and secondly, that it was in the public interest that he should be permitted to do so. Both were findings of fact. A point of law on such findings of fact can arise only if there is no evidence before the board on which they can arrive at such findings or if such findings are inconsistent with the evidence. As was stated by Denning J. (as he then was) in the case of *Bracegirdle* v. *Oxley*,(1) "The court will only interfere if the conclusion cannot reasonably be drawn from the primary facts. . . ."

How a point of law may be involved in findings of fact was considered by Barakbah J. (as he then was) in *Tay Yew Heng* v. *Lee Thean Lai* (2) and by Thomson C.J. (as he then was)